IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.10 of 1989
Date of decision:22.11.2006

The Commissioner of Income Tax, Patiala

....Petitioner

versus

M/s Charan Dass Halwai and Co., Sangrur

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Sharda, Advocate, for the revenue.

JUDGMENT:

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal') arising out of its order dated 30.3.1988 in ITA No.601(ASR)/83, for the assessment year 1977-78:-

> "Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right on facts and in law in confirming the order of the Commissioner of Income Tax (Appeals) cancelling the penalty levied under section 271(1)(c) of the Income Tax Act, 1961?"

The Assessing Officer made addition by holding that actual purchases made by the assessee were more than purchases recorded and the assessee had also shown sales less than the sales actually made. The addition was partly upheld by the Tribunal.

The Assessing Officer imposed penalty of Rs.22,900/- but the CIT(A) cancelled the same, which view was upheld by the Tribunal. It was held that in quantum matter, estimates of the Assessing Officer were drastically reduced and merely on estimate, penalty was not justified. In proceedings for penalty, mere estimate was not enough. It was held that a

categorical finding of concealment could not be recorded against the assesseee.

We have heard learned counsel for the revenue and perused the findings recorded.

Learned counsel for the revenue is unable to show as to how concurrent finding by the CIT(A) and the Tribunal that no categorical finding of concealment could be recorded against the assessee, was perverse.

The finding recorded being a finding of fact and having not been shown to be perverse, the question referred has to be answered against the revenue and in favour of the assessee.

Ordered accordingly.

Reference is disposed of.

(Adarsh Kumar Goel)
Judge

November 22, 2006
'gs'

(Rajesh Bindal)
Judge